IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6815 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL RAOJIBHAI CHHOTABHAI

Versus

VADODARA URBAN DEVELOPMENT AUTHORITY (BUDA)

Appearance:

MR HM PARIKH for the Petitioners.
MR MD PANDYA for Respondent No. 1
MR NILESH A PANDYA for Respondent No. 2
Mr. L.B.Dabi, AGP for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 31/01/2002

ORAL JUDGEMENT

This is a petition for a direction to the respondent authorities to hold that the dispute land

bearing block no. 664, surveynos. 373, 325, 319, 320, 321, 371 and 365 of village Gorva, Dist: Vadodara which has not been continued to be reserved land from January, 1995 and for a direction to the respondents to permit the petitioners to submit development plan and builing plan to develop the land and also to direct the respondents to process the application for development plan in respect of the disputed land according to law. The petitioners own land within the limits of the the respondent no. 2 Corporation. The respondent no.1 made a development plan in respect of the entire area situated within its limits and including the lands of the petitioners. The respondent no. 3 sanctioned the development plan by issuing a notification dated 22nd December, 1983 with effect from 2.1.1984. Under the draft development plan, the land of the petitioners and other persons was reserved for commercial local centre of Vadodara Municipal Corporation for 10 years. The respondents have done nothing. They had not acquired the land for public purpose as stated for the local commercial centre. Hence, the petitioners served a notice to the respondents Corporation. Even after six months of the notice, the respondent Corporation did not initiate for acquisition of petitioners' land. Hence, the petitioners requested for release of that land from the reservation as per the provisions of section 20(2) of the Gujarat Town Planning and Urban Development Act, 1976 ((hereinafter referred to as the "Act"). But they filed some revised draft development and that was sanctioned by the State Government on 20th October, 1996 and that plan has already been sanctioned by the State Government to carry on the reservation of the land of the petitioners as well as of other persons for local commercial centre. Therefore, the petitioners have filed the present petition.

2. Heard the learned counsel for the parties and perused the relevant papers on record. The learned counsel for the respondent no. 2 has also filed written submissions. The contention of the learned counsel for the petitioners is that as per the provisions of section 20(2) of the Act, it is provided that if the land referred to under section 20(1) is not acquired by the agreement within a period of 10 years from the date of coming into force of the final development or if the proceedings under the Land Acquisiton Act are not commenced within the said period, the owner or any person interested in the land may serve a notice on the authority concerned requiring it to acquire the land and if within six months from the date of the service of such notice, the land is not acquired or no steps are taken

for its acquisition, the designation of the land as aforesaid will be deemed to have lapsed. In the present case, the petitioners have already given a notice to the authorities concerned on 21.7.1994 and even after six months of the notice, no proceedings have been taken by the respondent authorities for acquisition of that property. As such, the reservation of the land shall be deemed to have lapsed. In this connection, the learned counsel for the petitioners relied on the decision of this Court in the case of Balwantbhai Maganlal Chauhan vs. Municipal Corporation of the city of Surat and others reported in 2000(3) GLR, 1963 wherein the reservation/designation of the land in question has been treated to have lapsed and inoperative. The petitioner was entitled to proceed on the basis that there is no reservation or designation of the land in question for any specific period. He also placed reliance on the decision dated 24.11.2000 between Palitana Sugar Mills Pvt. Ltd. vs. State of Gujarat in Special Civil Application no. 10108 of 1994 delivered by the Division Bench of this Court wherein it has been observed that :

> "Similarly, Special Civil Application no. 337 of 199 arising from Vaodara City also stands allowed. The petitioner's land reserved for Local Centre of Vadodara Municipal Corporation shall stand dereserved on failure of the authorities to acquire the land within the prescribed period under section 20(2) of the Town Planning Act and regardless of issuance of draft revised development plan and issuance of final revised development plan within ten years and sanction of final revised development plan on expiry of ten years."

In the present case, the petitioners' land was reserved for local commercial centre. Some of the land holders preferred Special Civil Application no. 3537 of 199 against Vadodara Municipal Corporation in respect of the petitioners' land which is also a part of the local commercial centre. The petition of the similarly situated persons like the petitioners was allowed by this Court and the owners of the lands similarly situated like the petitioners filed Special Civil Application no. 337 of 1999 in respect of reservation for local commercial centre and that petition has been allowed by this Court and the land of the similarly situated persons has been held to have de-reserved as the authorities had failed to acquired the same within the prescribed period under section 20(2) of the Act. Thus, the petitioners are also

entitled for the same relief which has already been granted by the Division Bench in respect of the similarly situated persons whose petition has been allowed.

3. The learned counsel for the respondent Corporation contended that under section 20(2) of the Act, notice is required to be given for de-reservation if it is not acquired within six months after the notice or proceedings are not initiated within six months after the notice, the designation or reservation would stand lapsed. But in the present case, the petitioner has made a representation which cannot be treated as a notice under section 20(2) of the Act. Under the provisions of section 20(2) of the Act, the land holder is required to serve a notice on the authorities requiring it to acquire the land. If the land is not acquired or no steps are taken within six months from the date of service of notice for its acquisition or designation, the designation of the land shall be deemed to have lapsed. In the present case, the petitioners have made a prayer by their representation date 21st July, 1994 that the land be handed over to the petitioners. It is not mentioned in the representation that the authority is required to acquire the land within six months, but in the instant case, in the representation/ application sent by the petitioner, the prayer is only for return of the land as it was not used or acquire by the authorities for 10 years for the public purpose as per the provisions of section 20(2) of the Act. As such, the application dated 21st July, 1994 made by the petitioners cannot be treated as a notice under the provisions of section 29(2) of the Act.

4. I have carefully considered the arguments of the learned counsel for the parties. The intention of the provisions of section 20(2) of the Act is to give a notice to the authority concerned to the effect that the authority has not acquired the land for 10 years and has not taken any steps for acquistion of the land and so the land should be returned to the petitioners. Even if it is not mentioned in the notice or application that the authority is required to acquire the land, it will be deemed that the notice has been given to the authority that the authority has not acquired the land or has not started proceedings for the acquisition of the land within 10 years. If the land is not acquired or proceedings are not taken for acquisition of the land within six months after the date of the notice, the aforesaid reservation will be deemed to have lapsed and for that purpose, the petitioners are required to bring to the notice of the authorities that the authority has

not acquired the land within 10 years and if the authority intends to acquire the same, then the authority could have taken steps for acquisition within six months after the notice. If the authority is not taking any action, then the application of the petitioner, even if it is in the form of a representation, would amount to a notice under the provisions of section 20(2) of the Act.

5. The next contention of the learned counsel for the respondent Corporation is that in the revised draft development plan, the property of the petitioners remains intact as reserved or designated for local commercial centre and that revised plan has been sanctioned by the State Government on 25.10.1996 and that reservation was continued in the revised draft development plan. As such, the petitioners cannot claim the benefit of de-reservation automatically or de-reservation. Moreover, the petitioners have filed this petition on 17th September, 1999 after sanction of the revised draft plan on 25.10.1996. Therefore, the land has already been put in reservation and the period of 10 years have not expired after sanction given by the State Government on 25.10.1996. According to him, the State Government has a right to revise the scheme under section 21 of the Act. As such, this petition deserves to be dismissed.

I have considered this argument of the learned counsel for the respondent Corporation. As per the division bench judgment of this Court dated 24th November, 2000 in the aforesaid batch of petitions, this Court has allowed the petitions of the similarly situate persons like the petitioners and the same relief as sought for in the present petition has been granted. This Court has directed that the land reserved for local commercial centre of Vadodara Municipal Corporation shall stand de-reserved. In the same manner, this petition has been filed by the petitioners who are similarly situated like the petitioners in Special Civil Application No. 3537 of 1995. In that petition, the land of similarly situated persons like the petitioners reserved for local commercial centre has been held to have de-reserved. Therefore, the petitioner is entitled for the same relief. The petitioners' land will also stand de-reserved as the authorities have failed to acquire the land within the prescribed period under section 20(2) of the Act.

6. The learned counsel for the respondent Municipal Corporation also pointed out that a Special Leave Petition before the Supreme Court has been filed

against the judgment delivered by the Division Bench of this Court and in that SLP, the Supreme Court has directed to maintain the status quo. Hence, even if this petition is allowed, the petitioners cannot be permitted to make any development until the SLP pending before the Supreme Court is finally decided.

7. Looking to the facts and circumstances of the case that the respondent Corporation has not acquired the land in question for a period of 10 years from 22nd December, 1983 i.e. from the date of sanction of the draft development by the State Government as well even after six months of giving the notice date 21st July, 1996, I am of the opinion that the authorities have failed to acquire the land of the petitioners or initiate the proceedings for acquisition of the land even within six months of the service of notice by the petitioners, as a result, this petition deserves to be allowed.

8. In view of the above discussion and provisions of the Act, this petition is allowed. It is declared that the petitioner's land will be deemed to have de-reserved. However, in view of the order of status quo passed by the Supreme Court in the Special Leave Petition filed against similarly situated persons like the petitioners, the petitioners are hereby directed to file an undertaking before this Court within a period of six months to the effect that they will not transfer, alienate, encumber or develop the land in question without express permission of the respondent Corporation and until the SLP is finally decided by the Supreme Court. Rule is made absolute accordingly with no order as to costs.

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